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opinions, so far from being rested upon this narrow ground, have specifically stated that insurance is not "commerce" within the meaning of the constitutional provision. Furthermore, if insurance were "commerce," state statutes exacting a tax or license from foreign insurance companies as conditions precedent to their doing business within the state, could not be sustained consistently with the line of decisions which hold invalid identical statutes concerning express companies and railroads. *Cf. Crutcher* v. *Kentucky*, 141 U. S. 47; *Hooper* v. *California*, 155 U. S. 648, 653; *Nutting* v. *Massachusetts*, 183 U. S. 553, 556. In each class of cases the state is not legislating concerning merely local subjects, but is interfering directly with the freedom of interstate business; in each the interference is sought to be justified by the right to exercise police powers. The only valid distinction between the two classes of statutes is that one does, and the other does not, attempt to regulate "commerce." The recent decision concerning lottery tickets, which is cited in the majority report holds, not that lottery companies are engaged in "commerce," but that the carrying of lottery tickets by an express company is commerce. *Lottery Case*, 188 U. S. 321, 354. This opinion, from which four justices dissented, can hardly be said to have weakened the authority of the earlier cases recognizing the power of a state to regulate insurance. A reversal of these decisions could be justified only upon the ground that a radical change in the nature of the business of insurance has occurred since they were rendered; and on principle it seems difficult to distinguish the present business of insurance from that of the negotiation of any contract by mail between parties residing in different states.

DISHONOR OF A CERTIFIED CHECK. — It is common belief that a bank is under an absolute obligation to pay a check certified at the instance of the payee as long as the check remains in his possession, and that the payee, questions of forgery aside, has an irrevocable right to compel payment, irrespective of the circumstances under which he procured the check. MORSE, BANKS AND BANKING, 4th ed., § 414. While admitting this as a general principle, a late article by an anonymous writer suggests that the bank, under certain circumstances, is justified in refusing to honor the check. *Stopping Payment of a Certified Check*, 22 Bank. L. J. 411 (June, 1905). It is, of course, assumed that the check has not reached the hands of a *bona fide* purchaser for value. The author points out that a certified check is analogous to a promissory note of the bank, and that a bank does right in refusing to pay its bank note held by a thief. *Olmstead* v. *Bank*, 32 Conn. 278. Therefore, under like conditions, it should also be protected in its refusal to pay a certified check; and it is contended that the same power should exist when the bank has notice that the check was obtained by the payee through fraud on the maker, or as payment for an illegal transaction, such as gambling, in which both maker and payee were concerned.

Though the writer does not support his view by any theoretical discussion, his result appears to be substantially correct. On certification the practice is for the bank to debit immediately the amount of the check to the maker's account, and credit its "certified check account," which is in turn debited with the check on payment. The drawer being thus effectually deprived of all control over that amount of his earlier credit, a novation arises, by which the bank promises the drawer to pay the payee, in consideration of the drawer's giving up all claim on it. As the act of certification is merely a short cut for actual payment by the bank of the amount of the check, and its redeposit by the payee, the payee, as consideration for the bank's promise, accepts the extinction of the check and allows the money to remain on deposit. Finally, the novation is completed by the payee's promise to accept the bank as debtor in the drawer's place, for which the latter promises to release his claim against the bank. A certified check is, then, like a bank note — the maker is released, and the bank is bound directly to the payee.

When fraud becomes an element of the situation, however, the ordinary rule, founded on equitable principles, permitting the defrauded party to trace and recover his property, must apply. 2 PARSONS, CONTRACTS, 9th ed., 949. Thus in the case of a certified check in the hands of a fraudulent payee, the maker has a right to recover it, and the payee holds it in constructive trust for him. See 19 HARV. L. REV. 55. If the bank has knowledge of the facts, it would seem proper not only that it should have the right not to honor the check, but that it should be liable to the maker, if it does honor it. That the payee has turned penitent when he asks the bank to pay the check, and is about to reimburse the maker, is highly improbable, and payment by the bank, with knowledge of these circumstances, is an equitable tort against the maker, an injury to his beneficial interest in the check, the *res*, such as to make the bank liable to him, as *cestui*, for its connivance at the breach of the constructive trust. Cf. 19 HARV. L. REV. 68. Where the payee has been guilty of theft, the same constructive trust relationship would arise; but it is difficult to find the basis on which the drawer could urge any equitable claim where he and the payee are confederates in illegality. In such a case the maker, since he is *in pari delicto* with the payee, is in no position to claim any equity in his own favor. See *McCord* v. *Bank*, 96 Cal. 197.

DEPENDENT SERVICES OF COMMON CARRIER. — In the general development of the law of public-service companies, certain phases of the subject have received inadequate treatment by courts and text-writers. One of these relates to the dependent services of common carriers. A recent article by Professor Wyman furnishes an admirable discussion of the question, not only collating the leading cases on the points involved, but working out a consistent theory by which to test the conflicting decisions. *The Public Duty of the Common Carrier in Relation to Dependent Services*, by Bruce Wyman, 17 Green Bag 570 (Oct., 1905). The subject involves the relations of railroads to express companies, palace and refrigerator car companies, hackmen at railway stations, transfer companies, etc. The authorities seem to be about equally divided, and as the question has been passed upon as yet in less than half of the States of the country, the subject is a fruitful one for discussion.

The case of the express companies may be taken as typical. Is the carrier bound to furnish express facilities to all express companies which apply, or may it make an exclusive agreement with one company for the carriage of all express matter over its line? The carrier's responsibility is founded on its public duty. It seems that it owes no direct duty to the express companies, for it might, *ultra vires* aside, carry on an express business itself and shut out all express companies from its line. Moreover, it has never held itself out as a carrier for all express companies. Historically the relation has always been based on contracts with individual companies. Its duty is to the shipping public to carry all express matter from one end of its rails to the other. If none of the law of public service applies between the carrier and the express company, however, it follows, argues Professor Wyman, that the latter may be charged extortionate prices by the carrier, which in turn will react upon the public. The express company is itself a common carrier, and therefore bound to carry at a reasonable rate; but this duty is relative, and if it must pay an increased price, it may charge it against the public as a necessary operating expense. To protect the public from such a result the author submits that we must apply the law of public service companies throughout. To insure the public the satisfactory service at a reasonable rate, to which it is undoubtedly entitled, we must hold that the carrier performs its whole duty only by serving all express companies with adequate facilities, without discrimination and for a fair compensation.

It may be argued, however, that since the railroads' only duty is to the public, so long as the public are served to their reasonable satisfaction, it is a